

**IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF
MISSOURI, WESTERN DIVISION**

**ST. PAUL FIRE AND MARINE
INSURANCE CO.
and
CHARTER OAK INSURANCE CO.**

Plaintiffs,

v.

**BUILDING CONSTRUCTION
ENTERPRISES, INC.**

Defendants,

and

**BUILDING CONSTRUCTION
ENTERPRISES, INC.**

Third-Party Plaintiff,

Case No. 06-0248-CV-W-SWH

v.

NORTH RIVER INSURANCE COMPANY

**Serve at:
305 Madison Ave.
PO Box 1943
Morristown, NJ 07960**

and

**GREAT AMERICAN ALLIANCE
INSURANCE COMPANY,**

**Serve at:
580 Walnut Street
Cincinnati, OH 45201-2575**

Third-Party Defendants.

**DEFENDANT BUILDING CONSTRUCTION ENTERPRISES, INC.'S THIRD-PARTY
COMPLAINT FOR DECLARATORY JUDGMENT**

COMES NOW defendant Building Construction Enterprises, Inc., (“BCE”), by and through the undersigned counsel, and for its Third-Party Complaint for Declaratory Judgment states and avers as follows:

1. BCE is a Kansas Corporation registered to do business and maintaining an office in the state of Missouri.

2. North River Insurance Company (“North River”) is a corporation authorized to conduct insurance business in the state of Missouri.

3. Great American Alliance Insurance Company (“Great American”) is a corporation authorized to conduct insurance business in the state of Missouri.

4. North River issued to BCE a Commercial Umbrella Policy numbered 553-085750-7 for the policy period March 31, 2004, to March 31, 2005, to provide coverage in excess of the underlying St. Paul policy numbered KC08000054 (a copy of which is attached to Plaintiffs’ Petition). See **Exhibit 1**, attached hereto and incorporated herein.

5. Great American issued to BCE a Commercial Umbrella Policy numbered UMB 5654918 for the policy period March 31, 2005, to March 31, 2006, to provide coverage in excess of the underlying Charter Oak policy numbered CO-6981B205-COF-B (a copy of which is attached to Plaintiffs’ Petition). See **Exhibit 2**, attached hereto and incorporated herein.

6. All insurance policies implicated herein were issued and delivered in the State of Missouri and were negotiated by an agent/broker licensed and located in the State of Missouri.

7. On March 22, 2006, Plaintiffs brought suit for declaratory judgment against defendants BCE and the United States Army Corps of Engineers (“COE”), asking the Court to determine coverage under the relevant policies and alleging a number of exclusions and

endorsements applied to preclude coverage. See Plaintiffs' Petition for Declaratory Judgment, filed on March 22, 2006.

8. BCE timely filed its Answer asserting coverage and denying the Plaintiffs' allegations of no coverage based on the cited exclusions and endorsements. See Defendant BCE's Answer and Counterclaims to Plaintiffs' Petition for Declaratory Judgment, filed on April 17, 2006.

9. Through their "Petition," the plaintiffs pray the Court determine insurance coverage under the primary Commercial General Liability ("CGL") policies, identified herein and issued to BCE by the Plaintiffs, for damages incurred on the COE project known as the CACTF Project on the Ft. Riley, Kansas, military installation.

10. The damages incurred by BCE and for which claim has been made to its insurers, including the plaintiffs, exceed \$3,200,000.00 and, therefore, implicate the excess coverage provided by the Commercial Umbrella Policies identified herein.

11. The North River policy numbered 553-085750-7 provides coverage as follows:

A. We will pay on behalf of the "Insured" those sums in the excess of the "Retained Limit" which the "Insured" by reason of liability imposed by law, or tort liability assumed by the "Insured" under contract or agreement prior to the "Occurrence," shall become legally obligated to pay as damages for:

1. "Bodily Injury" or "Property Damage" occurring during the Policy Period stated in Item 2 of the Declarations and caused by an "Occurrence"

12. No exclusions or endorsements in the North River policy exclude coverage under the facts of this case.

13. The Great American policy numbered UMB 5654918 provides coverage as follows:

- I. We will pay on behalf of the “Insured” those sums in the excess of the “Retained Limit” that the “Insured” becomes legally obligated to pay by reason of liability imposed by law or assumed by the “Insured” under an “insured contract” because of “bodily injury,” “property damage,” “personal injury,” or “advertising injury” that takes place during the Policy Period and is caused by an “occurrence” happening anywhere.

14. No exclusions or endorsements in the Great American policy exclude coverage under the facts of this case.

WHEREFORE, the defendant, Building Construction Enterprises, Inc., prays this Court enter judgment declaring the Commercial Umbrella Policies issued by Third-Party Defendants North River and Great American provide coverage for the underlying claims, declare Third-Party Defendants obligated to defend and indemnify BCE, and grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

LONG, LUDER & GORDON, P.A.



By: _____

Scott C. Long MO#42900

April L. Martin MO#57099

P.O. Box 26287

Overland Park, Kansas 66225-6287

(913) 491-9300 Telephone

(913) 491-9323 Facsimile

SLong@LLGLaw.com

AMartin@LLGLaw.com

**ATTORNEYS FOR BUILDING
CONSTRUCTION ENTERPRISES, INC.**